IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10385 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ADODIYA SHOBHNABEN SHIVLAL

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/04/2000

ORAL JUDGEMENT

#. The petitioner - Adodiya Shobhaben Shivlal, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by District Magistrate, Bhavnagar, in exercise of powers under

Section 3(2) of the PASA Act, dated December 6, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 8 offences registered against the petitioner under the Bombay Prohibition Act. The detaining authority also took into consideration the statements of 4 anonymous witnesses and came to conclusion that the petitioner is a "bootlegger", that her activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. Ms. Kachchhwah, learned advocate appearing for the petitioner tried to support the petition on the ground that the representation made on behalf of the detenue to the detaining authority on December 21, 1999 has not been expeditiously considered.

#. Mr. K.T.Dave, learned AGP has opposed this petition. He submitted that two representations have been made on 21st December, 1999 and 22nd December, 1999, one to the detaining authority and another to the Chief Minister and the representation made to the Chief Minister has been considered expeditiously. The representation made to the detaining authority has been considered by the government on 21st January, 2000 and therefore, there is no delay.

#. Having regard to rival side contentions, what emerges from the affidavit-in-reply is that the representation dated 21st December, 1999 addressed to the detaining authority was received by it on December 24, 1999. Because the order of detention was approved by the government, the authority had become functus officio, it was required to forward the same to the government. The said representation was forwarded by the detaining authority to the government on 31st December, 1999. As such, there is delay of 6 days in forwarding the representation made on behalf of the detenue. This delay has adversely affected the right of the detenue of making an effective representation. The continued detention, therefore, is rendered bad in law. The petition therefore, deserves to be allowed on this ground. (Urmilaben Navnitlal Gandhi v. Commissioner of Police, Surat, 1994 (2) GLH 10(UJ) 10 and Salim Pothiya Belia v. District Magistrate, Mehsana & others, 1994 (2) GLH 10 (UJ) 11).

#. The petition is allowed. Impugned order of detention dated December 6, 1999 is hereby quashed and set aside.

The detenue - Adodiya Shobhaben Shivlal is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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